IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 873 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MODERN MOULDING INDUSTRIES - Petitioner(s)

Versus

SHYAMVIR SINGH NAVAB SINGH - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

None.... for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 18/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 25.06.1998 passed by the Labour Court, Ahmedabad, in

Reference (LCA) No. 2114 of 1986, whereby the said reference was partly allowed.

2.0 The brief facts of the case are that the respondent herein was working as a Moulder with the petitioner Company. On account of misconduct on the part of the respondent, charge-sheet was issued to him on 25.07.1986. Since the charges against the respondent were proved, he was dismissed from service vide order dated 04.08.1986.

2.1 Feeling aggrieved by the said order, the respondent raised an industrial dispute, which, ultimately, came to be referred to the Labour Court by way of a reference. The Labour Court, Ahmedabad, by impugned order dated 25.06.1998, partly allowed the reference preferred by the respondent. Hence, this petition.

3.0 While issuing Notice on 16.08.1999, this Court had stayed the order of the Labour Court qua awarding 50% back wages only. Pursuant to the said order, the respondent workman was reinstated in service. However, due to the closure of the petitioner Company, the respondent was retrenched and all other benefits were paid to him. Hence, the question which is now required to

be considered by this Court is with regard to granting 50% back wages.

4.0 Mr. D R Dave learned advocate for the petitioner has contended that since the charges leveled against the respondent were proved before the Labour Court also, the Labour Court ought not to have awarded the back wages in question. He has submitted that the Labour Court has committed an error in not appreciating the fact that the respondent was gainfully employed during the interim period and was earning much more after his dismissal from the service. He has, therefore, submitted that the impugned order of the Labour Court is illegal and deserves to be quashed and set aside.

5.0 Mr.R V Desai and Mr.K R Koshti learned Advocate state that they are not appearing for the respondent in this matter since the respondent has taken away the papers from them. None appears on behalf of the respondent. I have heard learned counsel for the petitioner and perused the documents placed on record.

5.1 In the impugned order, the Labour Court has recorded a finding that the respondent was guilty of the charges

leveled against him. It is also proved that the respondent was gainfully employed and was earning much more after his dismissal. In spite of the said findings, the Labour Court has awarded 50% back wages to the respondent.

5.2 Moreover, in view of the principle laid down by the Apex Court of “No Work No Pay”, the respondent cannot be said to be entitled for back wages. Hence, the impugned order of the Labour Court qua granting 50% back wages is required to be quashed and set aside.

6.0 In the result, this petition is partly allowed. The impugned order dated 25.06.1998 passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 2114 of 1986 qua awarding 50% back wages to the respondent is quashed and set aside. The rest of the order is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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